

## **BILL ANALYSIS**

C.S.H.B. 1974  
By: Wray  
Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties assert the need to update the law relating to durable powers of attorney to reflect developments in relevant case law. C.S.H.B. 1974 seeks to provide for this update.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 1974 amends the Estates Code to establish that the Durable Power of Attorney Act applies to all durable powers of attorney except for the following: a power of attorney to the extent it is coupled with an interest in the subject of the power, including a power of attorney given to or for the benefit of a creditor in connection with a credit transaction; a medical power of attorney; a proxy or other delegation to exercise voting rights or management rights with respect to an entity; or a power of attorney created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose. The bill revises the criteria for an instrument to constitute a durable power of attorney by adding the condition that the instrument is a writing or other record that grants authority to a designated agent to act in the place of the principal regardless of whether the term "power of attorney" is used; replacing the condition that the instrument designates another person as attorney in fact or agent with the condition that the instrument designates another person as agent, which the bill defines as an attorney in fact and a co-agent, successor agent, or successor co-agent; adding an option for the instrument to be signed in the adult principal's conscious presence by another adult directed by the principal to sign the principal's name on the instrument as an alternative to being signed by the adult principal; and adding an option for the instrument to be acknowledged by the other adult so directed as an alternative to being acknowledged by the principal.

C.S.H.B. 1974 establishes that the meaning and effect of a durable power of attorney is determined by the law of the jurisdiction indicated in the durable power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction of the principal's domicile if the principal's domicile is indicated in the power of attorney or by the law of the jurisdiction in which the durable power of attorney was executed if the principal's domicile is not indicated in the power of attorney. The bill establishes that, if the law of a jurisdiction other than Texas determines the meaning and effect of a writing or other record that grants authority to an agent to act in the place of the principal, regardless of whether the term "power of attorney" is used, and provides that the authority conferred on the agent is exercisable notwithstanding the principal's

subsequent disability or incapacity, the writing or other record is considered a durable power of attorney under the Durable Power of Attorney Act. The bill establishes that, unless otherwise defined by a durable power of attorney, a person is considered disabled or incapacitated for purposes of the durable power of attorney if a physician certifies in writing at a date later than the date the durable power of attorney is executed that, based on the physician's medical examination of the person, the person is determined to be mentally incapable of managing the person's financial affairs.

C.S.H.B. 1974 specifies the conditions under which a signature on a durable power of attorney that purports to be the signature of the principal or of another adult directed by the principal is presumed to be genuine and the durable power of attorney is presumed to have been executed. The bill establishes a durable power of attorney executed in Texas as valid if the execution of the instrument complies with the applicable criteria under state law and establishes a durable power of attorney executed in a jurisdiction other than Texas as valid in Texas if, when executed, the execution of the durable power of attorney complied with the law of the jurisdiction that determines the meaning and effect of the durable power of attorney or with the requirements for a military power of attorney as provided by federal law. The bill gives a photocopy or electronically transmitted copy of an original durable power of attorney the same effect as the original instrument and authorizes a person who is asked to accept the durable power of attorney to rely on such a copy to the same extent as the original without liability, except as otherwise provided by statute other than the Durable Power of Attorney Act or by the durable power of attorney. The bill replaces a provision relating to the cumulative nature of the rights set out in the act with a provision establishing that the remedies under general provisions regarding durable powers of attorney are not exclusive and do not abrogate any right or remedy under any state law other than such provisions. The bill expressly subordinates the Durable Power of Attorney Act to any other law applicable to financial institutions or other entities to the extent of any conflict between the act and any other applicable law.

C.S.H.B. 1974 sets out provisions relating to the designation of co-agents and successor agents, a person's acceptance of appointment as an agent, and the reimbursement and compensation of an agent.

C.S.H.B. 1974 gives an agent to whom a durable power of attorney grants the authority to perform all acts that the principal could perform the general authority conferred by a statutory durable power of attorney. The bill authorizes an agent to take the following actions on the principal's behalf or with respect to the principal's property only if the durable power of attorney designating the agent expressly grants the agent the authority and the exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject: create, amend, revoke, or terminate an inter vivos trust; make a gift; create or change rights of survivorship; create or change a beneficiary designation; or delegate authority granted under the power of attorney. The bill prohibits an agent who is not an ancestor, spouse, or descendant of the principal from exercising authority under a durable power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property unless the power of attorney otherwise provides. The bill establishes that the broadest authority controls if the subjects over which authority is granted in a durable power of attorney are similar or overlap and that authority granted in a durable power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, regardless of whether the property is located in Texas and the authority is exercised in Texas or the power of attorney is executed in Texas. The bill sets out provisions relating to an agent's authority under a durable power of attorney to make gifts and to create or change certain beneficiary designations and relating to agent authority that is incorporated by reference to general authority.

C.S.H.B. 1974 extends the applicability of a provision relating to the effect of an act performed by an agent under a durable power of attorney during a period of the principal's disability or incapacity to any act performed by an agent under a durable power of attorney and specifies that

a person who accepts appointment as an agent under a durable power of attorney is a fiduciary as to the principal only when acting as an agent under the power of attorney.

C.S.H.B. 1974 requires an agent who has actual knowledge of a breach or imminent breach of fiduciary duty by another agent to notify the principal and, if the principal is incapacitated, to take any action reasonably appropriate under the circumstances to safeguard the principal's best interest. The bill makes an agent who fails to comply with that requirement liable for the reasonably foreseeable damages that could have been avoided if the agent had complied but otherwise exempts an agent who does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, from liability for the actions of the other agent unless the durable power of attorney provides otherwise.

C.S.H.B. 1974 sets out provisions relating to an agent's duty to preserve the principal's estate plan, the termination of a durable power of attorney, the termination of an agent's authority under a durable power of attorney, the effect of the termination of an agent's authority or a durable power of attorney on a person who acts in good faith under or in reliance on the power of attorney, and the effect of subsequently executed durable powers of attorney on previously executed powers of attorney. The bill replaces a reference to a "ward" with a reference to an "incapacitated person" in statutory provisions relating to the relationship between an agent and a court-appointed guardian of an estate.

C.S.H.B. 1974 includes a reverse mortgage and a home equity lien among the real property transactions requiring execution and delivery of an instrument that is to be recorded for which a durable power of attorney is required to be recorded in the office of the county clerk of the county in which the property is located not later than the 30th day after the date the instrument is filed for recording.

C.S.H.B. 1974 requires a person who is presented with and asked to accept a durable power of attorney by an agent with authority to act under the power of attorney to accept the power of attorney or, before accepting the power of attorney, request from the agent by a specified deadline, a certification of any factual matter concerning the principal, agent, or power of attorney; an opinion of counsel regarding any matter of law concerning the power of attorney; or, if applicable, an English translation of the power of attorney. The bill sets out provisions relating to such a certification, opinion of counsel, or English translation and requires a person who requests a certification or an opinion of counsel to accept the durable power of attorney not later than the seventh business day after the date the person receives the requested certification or opinion. The bill exempts a person from these requirements if one or more grounds for refusing to accept the durable power of attorney exist and sets out the grounds for refusing acceptance. The bill authorizes the deadline for requesting a certification, opinion of counsel, or English translation and the deadline for accepting a durable power of attorney after receiving a requested certification or opinion of counsel to be extended by agreement between the agent presenting the durable power of attorney and the person to whom the durable power of attorney is presented. A person is not required to accept a durable power of attorney if the agent refuses to or does not provide a requested certification, opinion of counsel, or English translation. The bill prohibits a person who is asked to accept a durable power of attorney from requiring that an additional or different form of the power of attorney be presented for authority that is granted in the power of attorney presented to the person and from requiring that the power of attorney be recorded in the office of a county clerk unless the recording of the instrument is required by state law.

C.S.H.B. 1974 sets out provisions relating to the written statement of refusal a person who refuses to accept a durable power of attorney must provide to its presenting agent. The bill specifies the date on which a durable power of attorney is considered accepted and sets out provisions relating to a person's reliance on a durable power of attorney accepted in good faith. The bill authorizes a person to rely on, without further investigation or liability to another person, an agent's certification, opinion of counsel, or English translation that is provided to the person. The bill establishes for purposes of general provisions regarding durable powers of

attorney that a person who conducts a transaction or activity through an employee of the person is not considered to have actual knowledge of a fact relating to a durable power of attorney, principal, or agent if the employee conducting the transaction or activity involving the power of attorney does not have actual knowledge of the fact and that a person is considered to have actual knowledge of such a fact if the employee conducting the transaction or activity involving the power of attorney has actual knowledge of the fact.

C.S.H.B. 1974 authorizes the principal or an agent acting on the principal's behalf to bring an action against a person who refuses to accept a durable power of attorney in violation of the bill's provisions, but not until after the date the person is required to accept the durable power of attorney. The bill requires a court that finds that a person refused to accept a durable power of attorney in violation of the bill's provisions to order the person to accept the power of attorney, authorizes such a court to award the plaintiff court costs and reasonable and necessary attorney's fees, and establishes that such remedies are the exclusive remedies such a court can grant under general provisions regarding durable powers of attorney. The bill requires a court to dismiss an action that was commenced after the date a written statement signed under penalty of perjury and stating certain reasons for refusing acceptance was provided to the agent. The bill prohibits a court, in a timely action brought under these provisions, from ordering the person to accept the durable power of attorney if the agent receives such a written statement after the date the action is commenced but authorizes the court to award the plaintiff court costs and reasonable and necessary attorney's fees as the exclusive remedy under such general statutory provisions. The bill provides for a principal's liability to a person refusing to accept a durable power of attorney for the court costs and reasonable and necessary attorney's fees that the person incurs in defending an action under certain circumstances as the exclusive remedy under such general statutory provisions.

C.S.H.B. 1974 authorizes the following entities to bring an action requesting a court to construe or determine the validity or enforceability of a durable power of attorney or to review an agent's conduct under a durable power of attorney and grant appropriate relief: the principal or the agent; a guardian, conservator, or other fiduciary acting for the principal; a person named as a beneficiary to receive property, a benefit, or a contractual right on the principal's death; a governmental agency with regulatory authority to protect the principal's welfare; and a person who demonstrates to the court sufficient interest in the principal's welfare or estate. The bill requires the court to dismiss such an action on the principal's motion unless the court finds that the principal lacks capacity to revoke the agent's authority or the durable power of attorney. The bill authorizes a person who is asked to accept a durable power of attorney to bring an action requesting a court to construe or determine the validity or enforceability of the power of attorney.

C.S.H.B. 1974 revises the form known as a "statutory durable power of attorney" to include specified language regarding an agent's authority to sign home equity loan documents, to reflect certain changes made by the bill, and to include a statement that the meaning and effect of such a durable power of attorney is determined by Texas law. The bill sets out language that may be added to the statutory durable power of attorney to allow the principal to grant the agent the express authority to take specified actions on the principal's behalf or with respect to the principal's property. The bill includes entering into mineral transactions, including those specified by the bill, and designating the property that constitutes the principal's homestead among the actions the language conferring authority with respect to real property transactions in a statutory durable power of attorney empowers the agent to take without further reference to a specific description of the real property. The bill establishes that the power so conferred to mortgage and encumber real property includes the power to execute documents necessary to create a lien against the principal's homestead as provided by the Texas Constitution and to consent to the creation of a lien against property owned by the principal's spouse in which the principal has a homestead interest.

C.S.H.B. 1974 includes all matters that affect a life estate among the matters in which an agent is empowered to act for the principal under the language conferring authority with respect to estate,

trust, and other beneficiary transactions in a statutory durable power of attorney. The bill includes performing all acts necessary in relation to the principal's mail and providing for the reasonable care of the principal's pets subject to the needs of the principal, the principal's spouse and children, and other individuals entitled to be supported by the principal among the actions an agent is empowered to take under the language conferring authority with respect to personal and family maintenance in a statutory durable power of attorney. The bill revises the conditions under which an agent is expressly empowered to waive a principal's right to be a beneficiary of a joint or survivor annuity under the language conferring authority with respect to retirement plan transactions in a statutory durable power of attorney and clarifies an agent's authority to be named a beneficiary under a retirement plan in the case of a rollover or trustee-to-trustee transfer.

C.S.H.B. 1974 repeals provisions of the Durable Power of Attorney Act relating to the duration of a durable power of attorney, the effect that a principal's divorce or marriage annulment has on a spouse-agent under a durable power of attorney, good-faith reliance by a person on a durable power of attorney that has been terminated without the person's knowledge, good-faith reliance on an affidavit executed by an agent under a durable power of attorney regarding the agent's lack of knowledge of the revocation or termination of the power or the disability or incapacity of the principal, the nonliability of a third party who relies in good faith on the acts of an agent performed within the scope of a durable power of attorney, and the effect of a revocation of a durable power of attorney on a third party relying on the power of attorney.

C.S.H.B. 1974 applies to a durable power of attorney, including a statutory durable power of attorney, created before, on, or after the bill's effective date, except that the bill's provisions relating to the reimbursement and compensation of an agent, the authority of an agent under a durable power of attorney, the effect of certain acts on the exercise of durable power of attorney, a duty to inform and account, recording a durable power of attorney for certain real property transactions, and a statutory durable power of attorney apply only to a durable power of attorney, including a statutory durable power of attorney, executed on or after the bill's effective date. The bill applies to a judicial proceeding concerning a durable power of attorney pending on, or commenced on or after, the bill's effective date but, if a court finds that application of a provision of the bill would substantially interfere with the effective conduct of a judicial proceeding concerning a durable power of attorney commenced before the bill's effective date or would prejudice the rights of a party to the proceeding, that bill provision does not apply.

C.S.H.B. 1974 repeals the following provisions of the Estates Code:

- Section 751.004
- Section 751.053
- Section 751.054
- Section 751.055
- Section 751.056
- Section 751.058

### **EFFECTIVE DATE**

September 1, 2017.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1974 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial

differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Subchapter A, Chapter 751, Estates Code, is amended by adding Section 751.0015 to read as follows:

Sec. 751.0015. APPLICABILITY OF SUBTITLE. This subtitle applies to all powers of attorney except:

(1) a power of attorney to the extent it is coupled with an interest in the subject of the power, including a power of attorney given to or for the benefit of a creditor in connection with a credit transaction;

(2) a medical power of attorney, as defined by Section 166.002, Health and Safety Code;

(3) a proxy or other delegation to exercise voting rights or management rights with respect to an entity; or

(4) a power of attorney created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

SECTION 2. Subchapter A, Chapter 751, Estates Code, is amended by amending Section 751.002 and adding Sections 751.0021, 751.0022, 751.0023, 751.0024, and 751.007 to read as follows:

Sec. 751.002. DEFINITIONS [DEFINITION OF DURABLE POWER OF ATTORNEY]. In this subtitle:

(1) "Actual knowledge" means the knowledge of a person without that person making any due inquiry.

(2) "Agent" includes:

(A) an attorney in fact; and

(B) a co-agent, successor agent, or successor co-agent.

(3) "Durable power of attorney" means a power of attorney that complies with the requirements of Section 751.0021(a) or is described by Section 751.0021(b).

(4) "Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal,

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter A, Chapter 751, Estates Code, is amended by adding Section 751.0015 to read as follows:

Sec. 751.0015. APPLICABILITY OF SUBTITLE. This subtitle applies to all durable powers of attorney except:

(1) a power of attorney to the extent it is coupled with an interest in the subject of the power, including a power of attorney given to or for the benefit of a creditor in connection with a credit transaction;

(2) a medical power of attorney, as defined by Section 166.002, Health and Safety Code;

(3) a proxy or other delegation to exercise voting rights or management rights with respect to an entity; or

(4) a power of attorney created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

SECTION 2. Subchapter A, Chapter 751, Estates Code, is amended by amending Sections 751.002, 751.003, and 751.006 and adding Sections 751.00201, 751.0021, 751.0022, 751.0023, 751.0024, and 751.007 to read as follows:

Sec. 751.002. DEFINITIONS [DEFINITION OF DURABLE POWER OF ATTORNEY]. In this subtitle:

(1) "Actual knowledge" means the knowledge of a person without that person making any due inquiry, and without any imputed knowledge, except as expressly set forth in Section 751.211(c).

(2) "Affiliate" means a business entity that directly or indirectly controls, is controlled by, or is under common control with another business entity.

(3) "Agent" includes:

(A) an attorney in fact; and

(B) a co-agent, successor agent, or successor co-agent.

(4) "Durable power of attorney" means a writing or other record that complies with the requirements of Section 751.0021(a) or is described by Section 751.0021(b).

regardless of whether the term "power of attorney" is used.

(5) "Principal" means a person who signs or directs the signing of the person's name on a power of attorney that designates an agent to act on the person's behalf.

(6) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Sec. 751.0021. REQUIREMENTS OF DURABLE POWER OF ATTORNEY. (a) An instrument is a durable power of attorney if the [A "durable power of attorney" means a written] instrument [that]:

(1) is a writing or other record;  
(1-a) designates another person as [attorney in fact or] agent;

(2) is signed by an adult principal or in the adult principal's conscious presence by another adult directed by the principal to sign the principal's name on the instrument;

(3) contains:  
(A) the words:  
(i) "This power of attorney is not affected by subsequent disability or incapacity of the principal"; or  
(ii) "This power of attorney becomes effective on the disability or incapacity of the principal"; or

(B) words similar to those of Paragraph (A) that show the principal's intent that the authority conferred on the [attorney in fact or] agent shall be exercised notwithstanding the principal's subsequent disability or incapacity; and

(4) is acknowledged by the principal or

(5) "Principal" means an adult person who signs or directs the signing of the person's name on a power of attorney that designates an agent to act on the person's behalf.

(6) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Sec. 751.00201. MEANING OF DISABLED OR INCAPACITATED FOR PURPOSES OF DURABLE POWER OF ATTORNEY. Unless otherwise defined by a durable power of attorney, a person is considered disabled or incapacitated for purposes of the durable power of attorney if a physician certifies in writing at a date later than the date the durable power of attorney is executed that, based on the physician's medical examination of the person, the person is determined to be mentally incapable of managing the person's financial affairs.

Sec. 751.0021. REQUIREMENTS OF DURABLE POWER OF ATTORNEY. (a) An instrument is a durable power of attorney for purposes of this subtitle if the [A "durable power of attorney" means a written] instrument [that]:

(1) is a writing or other record that designates another person as [attorney in fact or] agent and grants authority to that agent to act in the place of the principal, regardless of whether the term "power of attorney" is used;

(2) is signed by an adult principal or in the adult principal's conscious presence by another adult directed by the principal to sign the principal's name on the instrument;

(3) contains:  
(A) the words:  
(i) "This power of attorney is not affected by subsequent disability or incapacity of the principal"; or  
(ii) "This power of attorney becomes effective on the disability or incapacity of the principal"; or

(B) words similar to those of Paragraph (A) that clearly indicate [show the principal's intent] that the authority conferred on the [attorney in fact or] agent shall be exercised notwithstanding the principal's subsequent disability or incapacity; and

(4) is acknowledged by the principal or

another adult directed by the principal as authorized by Subdivision (2) before an officer authorized under the laws of this state or another state to:

(A) take acknowledgments to deeds of conveyance; and

(B) administer oaths.

(b) If the law of the jurisdiction that determines the meaning and effect of a power of attorney under Section 751.0024

provides that the authority conferred on the agent is exercisable notwithstanding the principal's subsequent disability or incapacity, the power of attorney is considered a durable power of attorney under this subtitle.

Sec. 751.0022. PRESUMPTION OF GENUINE SIGNATURE.

Sec. 751.0023. VALIDITY OF POWER OF ATTORNEY.

Sec. 751.0024. MEANING AND EFFECT OF DURABLE POWER OF ATTORNEY.

Sec. 751.007. CONFLICT WITH OTHER LAW.

SECTION 3. Chapter 751, Estates Code, is amended by adding Subchapters A-1 and A-2 to read as follows:

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another adult directed by the principal as authorized by Subdivision (2) before an officer authorized under the laws of this state or another state to:

(A) take acknowledgments to deeds of conveyance; and

(B) administer oaths.

(b) If the law of a jurisdiction other than this state determines the meaning and effect of a writing or other record that grants authority to an agent to act in the place of the principal, regardless of whether the term "power of attorney" is used, and that law provides that the authority conferred on the agent is exercisable notwithstanding the principal's subsequent disability or incapacity, the writing or other record is considered a durable power of attorney under this subtitle.

Sec. 751.0022. PRESUMPTION OF GENUINE SIGNATURE.

Sec. 751.0023. VALIDITY OF POWER OF ATTORNEY.

Sec. 751.0024. MEANING AND EFFECT OF DURABLE POWER OF ATTORNEY.

Sec. 751.003. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This subtitle shall be applied and construed to effect the general purpose of this subtitle, which is to make uniform to the fullest extent possible the law with respect to the subject of this subtitle among states enacting these provisions.

Sec. 751.006. REMEDIES UNDER OTHER LAW [RIGHTS CUMULATIVE]. The remedies [rights set out] under this chapter [subtitle] are not exclusive and do not abrogate any right or remedy under any law of this state other than this chapter [cumulative of any other rights or remedies the principal may have at common law or other applicable statutes and are not in derogation of those rights].

Sec. 751.007. CONFLICT WITH OTHER LAW.

SECTION 3. Chapter 751, Estates Code, is amended by adding Subchapters A-1 and A-2 to read as follows:

17.119.223



SUBCHAPTER A-1. APPOINTMENT OF AGENTS

Sec. 751.021. CO-AGENTS. A principal may designate in a durable power of attorney two or more persons to act as co-agents. Unless the power of attorney otherwise provides, each co-agent may exercise authority independently of the other co-agent.

Sec. 751.022. ACCEPTANCE OF APPOINTMENT AS AGENT.

Sec. 751.023. SUCCESSOR AGENTS.

Sec. 751.024. REIMBURSEMENT AND COMPENSATION OF AGENT. Unless the durable power of attorney otherwise provides or is in conflict with another applicable agreement or instrument to which the principal is a party, an agent is entitled to:

- (1) reimbursement of reasonable expenses incurred on the principal's behalf; and
- (2) compensation that is reasonable under the circumstances.

SUBCHAPTER A-2. AUTHORITY OF AGENT UNDER DURABLE POWER OF ATTORNEY

Sec. 751.031. GRANTS OF AUTHORITY IN GENERAL AND CERTAIN LIMITATIONS.

Sec. 751.032. GIFT AUTHORITY.

Sec. 751.033. AUTHORITY TO CREATE OR CHANGE CERTAIN BENEFICIARY DESIGNATIONS.

Sec. 751.034. INCORPORATION OF AUTHORITY.

SECTION 4. Sections 751.051, 751.057, 751.101, 751.102, 751.103, 751.104, 751.105, and 751.106, Estates Code, are amended to read as follows:

Sec. 751.051. EFFECT OF ACTS PERFORMED BY [~~ATTORNEY IN FACT OR~~] AGENT [~~DURING PRINCIPAL'S DISABILITY OR INCAPACITY~~].

Sec. 751.057. EFFECT OF BANKRUPTCY PROCEEDING.

SUBCHAPTER A-1. APPOINTMENT OF AGENTS

Sec. 751.021. CO-AGENTS. A principal may designate in a durable power of attorney two or more persons to act as co-agents. Unless the durable power of attorney otherwise provides, each co-agent may exercise authority independently of the other co-agent.

Sec. 751.022. ACCEPTANCE OF APPOINTMENT AS AGENT.

Sec. 751.023. SUCCESSOR AGENTS.

Sec. 751.024. REIMBURSEMENT AND COMPENSATION OF AGENT. Unless the durable power of attorney otherwise provides,

an agent is entitled to:

- (1) reimbursement of reasonable expenses incurred on the principal's behalf; and
- (2) compensation that is reasonable under the circumstances.

SUBCHAPTER A-2. AUTHORITY OF AGENT UNDER DURABLE POWER OF ATTORNEY

Sec. 751.031. GRANTS OF AUTHORITY IN GENERAL AND CERTAIN LIMITATIONS.

Sec. 751.032. GIFT AUTHORITY.

Sec. 751.033. AUTHORITY TO CREATE OR CHANGE CERTAIN BENEFICIARY DESIGNATIONS.

Sec. 751.034. INCORPORATION OF AUTHORITY.

SECTION 4. Sections 751.051, 751.057, 751.101, 751.102, 751.103, 751.104, 751.105, and 751.106, Estates Code, are amended to read as follows:

Sec. 751.051. EFFECT OF ACTS PERFORMED BY [~~ATTORNEY IN FACT OR~~] AGENT [~~DURING PRINCIPAL'S DISABILITY OR INCAPACITY~~].

Sec. 751.057. EFFECT OF BANKRUPTCY PROCEEDING.

Sec. 751.101. FIDUCIARY DUTIES. A person who accepts appointment as an agent under a durable power of attorney as provided by Section 751.022 [~~An attorney in fact or agent~~] is a fiduciary

and has a duty to inform and to account for actions taken under the power of attorney.

Sec. 751.102. DUTY TO TIMELY INFORM PRINCIPAL.

Sec. 751.103. MAINTENANCE OF RECORDS.

Sec. 751.104. ACCOUNTING.

Sec. 751.105. EFFECT OF FAILURE TO COMPLY; SUIT.

Sec. 751.106. EFFECT OF SUBCHAPTER ON PRINCIPAL'S RIGHTS.

SECTION 5. Chapter 751, Estates Code, is amended.

SECTION 6. Section 751.052, Estates Code, is transferred to Subchapter C-2, Chapter 751, Estates Code, as added by this Act, redesignated as Section 751.133, Estates Code, and amended to read as follows:

Sec. 751.133 [~~751.052~~]. RELATION OF [~~ATTORNEY IN FACT OR~~] AGENT TO COURT-APPOINTED GUARDIAN OF ESTATE. (a) If, after execution of a durable power of attorney, a court of the principal's domicile appoints a permanent guardian of the estate of the principal, the powers of the [~~attorney in fact or~~] agent terminate on the qualification of the guardian of the estate. The [~~attorney in fact or~~] agent shall:

(1) deliver to the guardian of the estate all assets of the ward's estate that are in the possession of the [~~attorney in fact or~~] agent; and

(2) account to the guardian of the estate as the [~~attorney in fact or~~] agent would account to the principal if the principal had terminated the powers of the [~~attorney in fact or~~] agent.

(b) If, after execution of a durable power of attorney, a court of the principal's domicile

Sec. 751.101. FIDUCIARY DUTIES. A person who accepts appointment as an agent under a durable power of attorney as provided by Section 751.022 [~~An attorney in fact or agent~~] is a fiduciary as to the principal only when acting as an agent under the power of attorney and has a duty to inform and to account for actions taken under the power of attorney.

and has a duty to inform and to account for actions taken under the power of attorney.

Sec. 751.102. DUTY TO TIMELY INFORM PRINCIPAL.

Sec. 751.103. MAINTENANCE OF RECORDS.

Sec. 751.104. ACCOUNTING.

Sec. 751.105. EFFECT OF FAILURE TO COMPLY; SUIT.

Sec. 751.106. EFFECT OF SUBCHAPTER ON PRINCIPAL'S RIGHTS.

SECTION 5. Same as introduced version.

SECTION 6. Section 751.052, Estates Code, is transferred to Subchapter C-2, Chapter 751, Estates Code, as added by this Act, redesignated as Section 751.133, Estates Code, and amended to read as follows:

Sec. 751.133 [~~751.052~~]. RELATION OF [~~ATTORNEY IN FACT OR~~] AGENT TO COURT-APPOINTED GUARDIAN OF ESTATE. (a) If, after execution of a durable power of attorney, a court of the principal's domicile appoints a permanent guardian of the estate of the principal, the powers of the [~~attorney in fact or~~] agent terminate on the qualification of the guardian of the estate. The [~~attorney in fact or~~] agent shall:

(1) deliver to the guardian of the estate all assets of the incapacitated person's [~~ward's~~] estate that are in the possession of the [~~attorney in fact or~~] agent; and

(2) account to the guardian of the estate as the [~~attorney in fact or~~] agent would account to the principal if the principal had terminated the powers of the [~~attorney in fact or~~] agent.

(b) If, after execution of a durable power of attorney, a court of the principal's domicile

appoints a temporary guardian of the estate of the principal, the court may suspend the powers of the ~~[attorney in fact or]~~ agent on the qualification of the temporary guardian of the estate until the date the term of the temporary guardian expires. This subsection may not be construed to prohibit the application for or issuance of a temporary restraining order under applicable law.

SECTION 7. Section 751.151, Estates Code, is amended.

SECTION 8. Chapter 751, Estates Code, is amended by adding Subchapters E and F to read as follows:

SUBCHAPTER E. ACCEPTANCE OF AND RELIANCE ON DURABLE POWER OF ATTORNEY

Sec. 751.201. ACCEPTANCE OF DURABLE POWER OF ATTORNEY REQUIRED; EXCEPTIONS. (a) Unless one or more grounds for refusal under Section 751.206 exist, a person who is presented with and asked to accept a durable power of attorney by an agent with authority to act under the power of attorney shall:

- (1) accept the power of attorney; or
- (2) before accepting the power of attorney:
  - (A) request an agent's certification under Section 751.203 or an opinion of counsel under Section 751.204 not later than the seventh business day after the date the power of attorney is presented, except as provided by Subsection (c); or
  - (B) if applicable, request an English translation under Section 751.205 not later than the fifth business day after the date the power of attorney is presented, except as provided by Subsection (c).

(b) Unless one or more grounds for refusal under Section 751.206 exist and except as provided by Subsection (c), a person who requests a certification or an opinion of counsel must accept the durable power of attorney not later than the fifth business day after the date the person receives the requested certification or opinion.

(c) An agent presenting a durable power of

appoints a temporary guardian of the estate of the principal, the court may suspend the powers of the ~~[attorney in fact or]~~ agent on the qualification of the temporary guardian of the estate until the date the term of the temporary guardian expires. This subsection may not be construed to prohibit the application for or issuance of a temporary restraining order under applicable law.

SECTION 7. Same as introduced version.

SECTION 8. Chapter 751, Estates Code, is amended by adding Subchapters E and F to read as follows:

SUBCHAPTER E. ACCEPTANCE OF AND RELIANCE ON DURABLE POWER OF ATTORNEY

Sec. 751.201. ACCEPTANCE OF DURABLE POWER OF ATTORNEY REQUIRED; EXCEPTIONS. (a) Unless one or more grounds for refusal under Section 751.206 exist, a person who is presented with and asked to accept a durable power of attorney by an agent with authority to act under the power of attorney shall:

- (1) accept the power of attorney; or
- (2) before accepting the power of attorney:
  - (A) request an agent's certification under Section 751.203 or an opinion of counsel under Section 751.204 not later than the 10th business day after the date the power of attorney is presented, except as provided by Subsection (c); or
  - (B) if applicable, request an English translation under Section 751.205 not later than the fifth business day after the date the power of attorney is presented, except as provided by Subsection (c).

(b) Unless one or more grounds for refusal under Section 751.206 exist and except as provided by Subsection (c), a person who requests:

- (1) an agent's certification must accept the durable power of attorney not later than the seventh business day after the date the person receives the requested certification; and
- (2) an opinion of counsel must accept the durable power of attorney not later than the seventh business day after the date the person receives the requested opinion.

(c) An agent presenting a durable power of

attorney for acceptance and the person to whom the power of attorney is presented may agree to extend a period prescribed by Subsection (a) or (b).

(d) If an English translation of a durable power of attorney is requested as authorized by Subsection (a)(2)(B), the power of attorney is not considered presented for acceptance under Subsection (a) until the date the requestor receives the translation. On and after that date, the power of attorney shall be treated as a power of attorney originally prepared in English for all the purposes of this subchapter.

(e) A person is not required to accept a durable power of attorney under this section if the agent refuses to or does not provide a requested certification, opinion of counsel, or English translation under this subchapter.

Sec. 751.202. OTHER FORM OR RECORDING OF DURABLE POWER OF ATTORNEY AS CONDITION OF ACCEPTANCE PROHIBITED.

Sec. 751.203. AGENT'S CERTIFICATION. (a) Before accepting a durable power of attorney under Section 751.201, the person to whom the power of attorney is presented may request that the agent presenting the power of attorney provide to the person an agent's certification, under penalty of perjury, of any factual matter concerning the principal, agent, or power of attorney.

(b) A certification described by Subsection (a) may be in the following form:

CERTIFICATION OF POWER OF ATTORNEY BY AGENT

I, \_\_\_\_\_ (agent), certify under penalty of perjury that:

1. I am the agent named in the power of attorney validly executed by \_\_\_\_\_ (principal) ("principal") on \_\_\_\_\_ (date), and the power of attorney is now in full force and effect.

2. The principal is not deceased and is presently domiciled in \_\_\_\_\_ (city and state/territory or foreign country).

3. To the best of my knowledge after diligent search and inquiry:

a. The power of attorney has not been revoked by the principal or suspended or terminated by the occurrence of any event, whether or not referenced in the power of

attorney for acceptance and the person to whom the power of attorney is presented may agree to extend a period prescribed by Subsection (a) or (b).

(d) If an English translation of a durable power of attorney is requested as authorized by Subsection (a)(2)(B), the power of attorney is not considered presented for acceptance under Subsection (a) until the date the requestor receives the translation. On and after that date, the power of attorney shall be treated as a power of attorney originally prepared in English for all the purposes of this subchapter.

(e) A person is not required to accept a durable power of attorney under this section if the agent refuses to or does not provide a requested certification, opinion of counsel, or English translation under this subchapter.

Sec. 751.202. OTHER FORM OR RECORDING OF DURABLE POWER OF ATTORNEY AS CONDITION OF ACCEPTANCE PROHIBITED.

Sec. 751.203. AGENT'S CERTIFICATION. (a) Before accepting a durable power of attorney under Section 751.201, the person to whom the power of attorney is presented may request that the agent presenting the power of attorney provide to the person an agent's certification, under penalty of perjury, of any factual matter concerning the principal, agent, or power of attorney.

(b) A certification described by Subsection (a) may be in the following form:

CERTIFICATION OF DURABLE POWER OF ATTORNEY BY AGENT

I, \_\_\_\_\_ (agent), certify under penalty of perjury that:

1. I am the agent named in the power of attorney validly executed by \_\_\_\_\_ (principal) ("principal") on \_\_\_\_\_ (date), and the power of attorney is now in full force and effect.

2. The principal is not deceased and is presently domiciled in \_\_\_\_\_ (city and state/territory or foreign country).

3. To the best of my knowledge after diligent search and inquiry:

a. The power of attorney has not been revoked by the principal or suspended or terminated by the occurrence of any event, whether or not referenced in the power of

attorney;

b. A permanent guardian of the estate of the principal has not qualified to serve in that capacity;

c. My powers under the power of attorney have not been suspended by a court in a temporary guardianship or other proceeding;

d. If I am (or was) the principal's spouse, my marriage to the principal has not been dissolved by court decree of divorce or annulment or declared void by a court, or the power of attorney provides specifically that my appointment as the agent for the principal does not terminate if my marriage to the principal has been dissolved by court decree of divorce or annulment or declared void by a court;

e. No proceeding has been commenced for a temporary or permanent guardianship of the person or estate, or both, of the principal; and

f. The exercise of my authority is not prohibited by another agreement or instrument.

4. If under its terms the power of attorney becomes effective on the disability or incapacity of the principal or at a future time or on the occurrence of a contingency, the principal now has a disability or is incapacitated or the specified future time or contingency has occurred.

5. I am acting within the scope of my authority under the power of attorney, and my authority has not been altered or terminated.

6. If applicable, I am the successor to \_\_\_\_\_ (predecessor agent), who has resigned, died, or become incapacitated, is not qualified to serve or has declined to serve as agent, or is otherwise unable to act. There are no unsatisfied conditions remaining under the power of attorney that preclude my acting as successor agent.

7. I agree not to:

a. Exercise any powers granted by the power of attorney if I attain knowledge that the power of attorney has been revoked, suspended, or terminated; or

b. Exercise any specific powers that have been revoked, suspended, or terminated.

8. A true and correct copy of the power of attorney is attached to this document.

9. If used in connection with an extension of credit under Section 50(a)(6), Article XVI, Texas Constitution, the power of

attorney;

b. A permanent guardian of the estate of the principal has not qualified to serve in that capacity;

c. My powers under the power of attorney have not been suspended by a court in a temporary guardianship or other proceeding;

d. If I am (or was) the principal's spouse, my marriage to the principal has not been dissolved by court decree of divorce or annulment or declared void by a court, or the power of attorney provides specifically that my appointment as the agent for the principal does not terminate if my marriage to the principal has been dissolved by court decree of divorce or annulment or declared void by a court;

e. No proceeding has been commenced for a temporary or permanent guardianship of the person or estate, or both, of the principal; and

f. The exercise of my authority is not prohibited by another agreement or instrument.

4. If under its terms the power of attorney becomes effective on the disability or incapacity of the principal or at a future time or on the occurrence of a contingency, the principal now has a disability or is incapacitated or the specified future time or contingency has occurred.

5. I am acting within the scope of my authority under the power of attorney, and my authority has not been altered or terminated.

6. If applicable, I am the successor to \_\_\_\_\_ (predecessor agent), who has resigned, died, or become incapacitated, is not qualified to serve or has declined to serve as agent, or is otherwise unable to act. There are no unsatisfied conditions remaining under the power of attorney that preclude my acting as successor agent.

7. I agree not to:

a. Exercise any powers granted by the power of attorney if I attain knowledge that the power of attorney has been revoked, suspended, or terminated; or

b. Exercise any specific powers that have been revoked, suspended, or terminated.

8. A true and correct copy of the power of attorney is attached to this document.

9. If used in connection with an extension of credit under Section 50(a)(6), Article XVI, Texas Constitution, the power of

attorney was executed in the office of the lender, the office of a title company, or the law office of \_\_\_\_\_.

Date: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(signature of agent)

(c) A certification made in compliance with this section is conclusive proof of the factual matter that is the subject of the certification.

Sec. 751.204. OPINION OF COUNSEL.

(a) Before accepting a durable power of attorney under Section 751.201, the person to whom the power of attorney is presented may request from the agent presenting the power of attorney an opinion of counsel regarding any matter of law concerning the power of attorney so long as the person provides to the agent the reason for the request in a writing or other record.

(b) Except as otherwise provided in an agreement to extend the request period under Section 751.201(c), an opinion of counsel requested under this section must be provided by the principal or agent, at the principal's expense. If, without an extension, the requestor requests the opinion later than the seventh business day after the date the durable power of attorney is presented to the requestor, the principal or agent may, but is not required to, provide the opinion, at the requestor's expense.

Sec. 751.205. ENGLISH TRANSLATION.

Sec. 751.206. GROUNDS FOR REFUSING ACCEPTANCE. A person is not required to accept a durable power of attorney under this subchapter if:

(1) the person would not otherwise be required to engage in a transaction with the principal under the same circumstances, including a circumstance in which the agent seeks to:

(A) establish a customer relationship with the person under the power of attorney when the principal is not already a customer of the person; or

(B) acquire a product or service under the power of attorney that the person does not offer;

(2) the person's engaging in the transaction with the agent or with the principal under the same circumstances would be inconsistent with:

(A) another law of this state or a federal

attorney was executed in the office of the lender, the office of a title company, or the law office of \_\_\_\_\_.

Date: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(signature of agent)

(c) A certification made in compliance with this section is conclusive proof of the factual matter that is the subject of the certification.

Sec. 751.204. OPINION OF COUNSEL.

(a) Before accepting a durable power of attorney under Section 751.201, the person to whom the power of attorney is presented may request from the agent presenting the power of attorney an opinion of counsel regarding any matter of law concerning the power of attorney so long as the person provides to the agent the reason for the request in a writing or other record.

(b) Except as otherwise provided in an agreement to extend the request period under Section 751.201(c), an opinion of counsel requested under this section must be provided by the principal or agent, at the principal's expense. If, without an extension, the requestor requests the opinion later than the 10th business day after the date the durable power of attorney is presented to the requestor, the principal or agent may, but is not required to, provide the opinion, at the requestor's expense.

Sec. 751.205. ENGLISH TRANSLATION.

Sec. 751.206. GROUNDS FOR REFUSING ACCEPTANCE. A person is not required to accept a durable power of attorney under this subchapter if:

(1) the person would not otherwise be required to engage in a transaction with the principal under the same circumstances, including a circumstance in which the agent seeks to:

(A) establish a customer relationship with the person under the power of attorney when the principal is not already a customer of the person or expand an existing customer relationship with the person under the power of attorney; or

(B) acquire a product or service under the power of attorney that the person does not offer;

(2) the person's engaging in the transaction with the agent or with the principal under the same circumstances would be inconsistent with:

(A) another law of this state or a federal

statute, rule, or regulation;

(B) a request from a law enforcement agency; or

(C) a policy adopted by the person in good faith that is necessary to comply with another law of this state or a federal statute, rule, regulation, regulatory directive, guidance, or executive order applicable to the person;

(3) the person would not engage in a similar transaction with the agent because the person:

(A) has filed a suspicious activity report as described by 31 U.S.C. Section 5318(g) with respect to the principal or agent;

(B) believes in good faith that the principal or agent has a prior criminal history involving financial crimes; or

(C) has had a previous, unsatisfactory business relationship with the agent due to or resulting in:

(i) substantial loss to the person;

(ii) financial mismanagement by the agent;

(iii) litigation between the person and the agent alleging substantial damages; or

(iv) multiple nuisance lawsuits filed by the agent;

(4) the person has actual knowledge of the termination of the agent's authority or of the power of attorney before an agent's exercise of authority under the power of attorney;

(5) the agent refuses to comply with a request for a certification, opinion of counsel, or translation under Section 751.201 or, if the agent complies with one or more of those requests, the requestor in good faith is unable to determine the validity of the power of attorney or the agent's authority to act under the power of attorney because the certification, opinion, or translation is unclear, limited, or qualified in a manner that makes the certification, opinion, or translation ineffective for its intended purpose;

(6) regardless of whether an agent's certification, opinion of counsel, or translation has been requested or received by the person under this subchapter, the person believes in good faith that:

(A) the power of attorney is not valid;

(B) the agent does not have the authority to act as attempted; or

(C) the performance of the requested act

statute, rule, or regulation;

(B) a request from a law enforcement agency; or

(C) a policy adopted by the person in good faith that is necessary to comply with another law of this state or a federal statute, rule, regulation, regulatory directive, guidance, or executive order applicable to the person;

(3) the person would not engage in a similar transaction with the agent because the person or an affiliate of the person:

(A) has filed a suspicious activity report as described by 31 U.S.C. Section 5318(g) with respect to the principal or agent;

(B) believes in good faith that the principal or agent has a prior criminal history involving financial crimes; or

(C) has had a previous, unsatisfactory business relationship with the agent due to or resulting in:

(i) material loss to the person;

(ii) financial mismanagement by the agent;

(iii) litigation between the person and the agent alleging substantial damages; or

(iv) multiple nuisance lawsuits filed by the agent;

(4) the person has actual knowledge of the termination of the agent's authority or of the power of attorney before an agent's exercise of authority under the power of attorney;

(5) the agent refuses to comply with a request for a certification, opinion of counsel, or translation under Section 751.201 or, if the agent complies with one or more of those requests, the requestor in good faith is unable to determine the validity of the power of attorney or the agent's authority to act under the power of attorney because the certification, opinion, or translation is incorrect, incomplete, unclear, limited, qualified, or otherwise deficient in a manner that makes the certification, opinion, or translation ineffective for its intended purpose, as determined in good faith by the requestor;

(6) regardless of whether an agent's certification, opinion of counsel, or translation has been requested or received by the person under this subchapter, the person believes in good faith that:

(A) the power of attorney is not valid;

(B) the agent does not have the authority to act as attempted; or

(C) the performance of the requested act

would violate the terms of:

(i) a business entity's governing documents;  
or

(ii) an agreement affecting a business entity, including how the entity's business is conducted;

(7) the person commenced, or has actual knowledge that another person commenced, a judicial proceeding to construe the power of attorney or review the agent's conduct and that proceeding is pending;

(8) the person commenced, or has actual knowledge that another person commenced, a judicial proceeding for which a final determination was made that found:

(A) the power of attorney invalid with respect to a purpose for which the power of attorney is being presented for acceptance;  
or

(B) the agent lacked the authority to act in the same manner in which the agent is attempting to act under the power of attorney;

(9) the person makes, has made, or has actual knowledge that another person has made a report to a law enforcement agency or other federal or state agency, including the Department of Family and Protective Services, stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting with or on behalf of the agent; or

(10) the person receives conflicting instructions or communications with regard to a matter from co-agents acting under the same power of attorney or from agents acting under different powers of attorney signed by the same principal or another adult acting for the principal as authorized by Section 751.0021, provided that the person may refuse to accept the power of attorney only with respect to that matter.

Sec. 751.207. WRITTEN STATEMENT OF REFUSAL OF ACCEPTANCE REQUIRED. (a) Except as provided by

would violate the terms of:

(i) a business entity's governing documents;  
or

(ii) an agreement affecting a business entity, including how the entity's business is conducted;

(7) the person commenced, or has actual knowledge that another person commenced, a judicial proceeding to construe the power of attorney or review the agent's conduct and that proceeding is pending;

(8) the person commenced, or has actual knowledge that another person commenced, a judicial proceeding for which a final determination was made that found:

(A) the power of attorney invalid with respect to a purpose for which the power of attorney is being presented for acceptance;  
or

(B) the agent lacked the authority to act in the same manner in which the agent is attempting to act under the power of attorney;

(9) the person makes, has made, or has actual knowledge that another person has made a report to a law enforcement agency or other federal or state agency, including the Department of Family and Protective Services, stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting with or on behalf of the agent;

(10) the person receives conflicting instructions or communications with regard to a matter from co-agents acting under the same power of attorney or from agents acting under different powers of attorney signed by the same principal or another adult acting for the principal as authorized by Section 751.0021, provided that the person may refuse to accept the power of attorney only with respect to that matter; or

(11) the person is not required to accept the durable power of attorney by the law of the jurisdiction that applies in determining the power of attorney's meaning and effect, or the powers conferred under the durable power of attorney that the agent is attempting to exercise are not included within the scope of activities to which the law of that jurisdiction applies.

Sec. 751.207. WRITTEN STATEMENT OF REFUSAL OF ACCEPTANCE REQUIRED. (a) Except as provided by



Subsection (b), a person who refuses to accept a durable power of attorney under this subchapter shall provide to the agent presenting the power of attorney for acceptance a written statement advising the agent of the reason or reasons the person is refusing to accept the power of attorney.

(b) If the reason a person is refusing to accept a durable power of attorney is a reason described by Section 751.206(2) or (3),

the person shall provide to the agent presenting the power of attorney for acceptance a written statement signed by the person under penalty of perjury stating that the reason for the refusal is a reason described by Section 751.206(2) or (3).

(c) The person must provide to the agent the written statement required under Subsection (a) or (b) on or before the date the person would otherwise be required to accept the durable power of attorney under Section 751.201.

Sec. 751.208. DATE OF ACCEPTANCE.

Sec. 751.209. GOOD FAITH RELIANCE ON POWER OF ATTORNEY.

Sec. 751.210. RELIANCE ON CERTAIN REQUESTED INFORMATION.

Sec. 751.211. ACTUAL KNOWLEDGE OF PERSON WHEN TRANSACTIONS CONDUCTED THROUGH EMPLOYEES.

(a) This section applies to a person who conducts a transaction or activity through an employee of the person.

(b) For purposes of this subchapter, a person is not considered to have actual knowledge of a fact relating to a durable power of attorney, principal, or agent if the employee conducting the transaction or activity involving the power of attorney does not have actual knowledge of the fact.

Subsection (b), a person who refuses to accept a durable power of attorney under this subchapter shall provide to the agent presenting the power of attorney for acceptance a written statement advising the agent of the reason or reasons the person is refusing to accept the power of attorney.

(b) If the reason a person is refusing to accept a durable power of attorney is a reason described by Section 751.206(2) or (3):

(1) the person shall provide to the agent presenting the power of attorney for acceptance a written statement signed by the person under penalty of perjury stating that the reason for the refusal is a reason described by Section 751.206(2) or (3); and  
(2) the person refusing to accept the power of attorney is not required to provide any additional explanation for refusing to accept the power of attorney.

(c) The person must provide to the agent the written statement required under Subsection (a) or (b) on or before the date the person would otherwise be required to accept the durable power of attorney under Section 751.201.

Sec. 751.208. DATE OF ACCEPTANCE.

Sec. 751.209. GOOD FAITH RELIANCE ON DURABLE POWER OF ATTORNEY.

Sec. 751.210. RELIANCE ON CERTAIN REQUESTED INFORMATION.

Sec. 751.211. ACTUAL KNOWLEDGE OF PERSON WHEN TRANSACTIONS CONDUCTED THROUGH EMPLOYEES.

(a) This section applies to a person who conducts a transaction or activity through an employee of the person.

(b) For purposes of this chapter, a person is not considered to have actual knowledge of a fact relating to a durable power of attorney, principal, or agent if the employee conducting the transaction or activity involving the power of attorney does not have actual knowledge of the fact.

(c) For purposes of this chapter, a person is considered to have actual knowledge of a fact relating to a durable power of attorney, principal, or agent if the employee conducting the transaction or activity involving the power of attorney has actual

Sec. 751.212. CAUSE OF ACTION FOR REFUSAL TO ACCEPT DURABLE POWER OF ATTORNEY. (a) The principal or an agent acting on the principal's behalf may bring an action against a person who refuses to accept a durable power of attorney in violation of this subchapter.

(b) An action under Subsection (a) may not be commenced against a person until after the date the person is required to accept the durable power of attorney under Section 751.201.

(c) If the court finds that the person refused to accept the durable power of attorney in violation of this subchapter, the court shall:

(1) order the person to accept the power of attorney; and

(2) award the plaintiff court costs and reasonable and necessary attorney's fees.

(d) The court shall dismiss an action under this section that was commenced after the date a written statement described by Section 751.207(b) was provided to the agent.

(e) Notwithstanding Subsection (c), if the agent receives a written statement described by Section 751.207(b) after the date a timely action is commenced under this section, the court may not order the person to accept the durable power of attorney, but instead may award the plaintiff court costs and reasonable and necessary attorney's fees.

Sec. 751.213. LIABILITY OF PRINCIPAL. In an action under Section 751.212, the principal may be liable to the person who refused to accept the durable power of attorney for court costs and reasonable and necessary attorney's fees incurred in defending the action if the court:

(1) finds that the action was commenced after the date the written statement described by Section 751.207(b) was timely provided to the agent;

(2) expressly finds that the person's refusal to accept the power of attorney was permitted under Section 751.206; or

(3) if Section 751.212(e) does not apply, does not issue an order ordering the person to accept the power of attorney.

knowledge of the fact.

Sec. 751.212. CAUSE OF ACTION FOR REFUSAL TO ACCEPT DURABLE POWER OF ATTORNEY. (a) The principal or an agent acting on the principal's behalf may bring an action against a person who refuses to accept a durable power of attorney in violation of this subchapter.

(b) An action under Subsection (a) may not be commenced against a person until after the date the person is required to accept the durable power of attorney under Section 751.201.

(c) If the court finds that the person refused to accept the durable power of attorney in violation of this subchapter, the court, as the exclusive remedy under this chapter:

(1) shall order the person to accept the power of attorney; and

(2) may award the plaintiff court costs and reasonable and necessary attorney's fees.

(d) The court shall dismiss an action under this section that was commenced after the date a written statement described by Section 751.207(b) was provided to the agent.

(e) Notwithstanding Subsection (c), if the agent receives a written statement described by Section 751.207(b) after the date a timely action is commenced under this section, the court may not order the person to accept the durable power of attorney, but instead may award the plaintiff court costs and reasonable and necessary attorney's fees as the exclusive remedy under this chapter.

Sec. 751.213. LIABILITY OF PRINCIPAL. (a) Subsection (b) applies to an action brought under Section 751.212 if:

(1) the court finds that the action was commenced after the date the written statement described by Section 751.207(b) was timely provided to the agent;

(2) the court expressly finds that the refusal of the person against whom the action was brought to accept the durable power of attorney was permitted under this chapter; or

(3) Section 751.212(e) does not apply and the court does not issue an order ordering the person to accept the power of attorney.

(b) Under any of the circumstances

SUBCHAPTER F. CIVIL REMEDIES

Sec. 751.251. JUDICIAL RELIEF. (a) The following may bring an action requesting a court to construe a durable power of attorney, or to review an agent's conduct under a durable power of attorney and grant appropriate relief:

- (1) the principal or the agent;
  - (2) a guardian, conservator, or other fiduciary acting for the principal;
  - (3) a person named as a beneficiary to receive property, a benefit, or a contractual right on the principal's death;
  - (4) a governmental agency with regulatory authority to protect the principal's welfare; and
  - (5) a person who demonstrates to the court sufficient interest in the principal's welfare or estate.
- (b) A person who is asked to accept a durable power of attorney may bring an action requesting a court to construe the power of attorney.

(c) On the principal's motion, the court shall dismiss an action under Subsection (a) unless the court finds that the principal lacks capacity to revoke the agent's authority or the durable power of attorney.

SECTION 9. Section 752.051, Estates Code, is amended to read as follows:

Sec. 752.051. FORM. The following form is known as a "statutory durable power of attorney":

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P, TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT

described by Subsection (a), the principal may be liable to the person who refused to accept the durable power of attorney for court costs and reasonable and necessary attorney's fees incurred in defending the action as the exclusive remedy under this chapter.

SUBCHAPTER F. CIVIL REMEDIES

Sec. 751.251. JUDICIAL RELIEF. (a) The following may bring an action requesting a court to construe, or determine the validity or enforceability of, a durable power of attorney, or to review an agent's conduct under a durable power of attorney and grant appropriate relief:

- (1) the principal or the agent;
  - (2) a guardian, conservator, or other fiduciary acting for the principal;
  - (3) a person named as a beneficiary to receive property, a benefit, or a contractual right on the principal's death;
  - (4) a governmental agency with regulatory authority to protect the principal's welfare; and
  - (5) a person who demonstrates to the court sufficient interest in the principal's welfare or estate.
- (b) A person who is asked to accept a durable power of attorney may bring an action requesting a court to construe, or determine the validity or enforceability of, the power of attorney.

(c) On the principal's motion, the court shall dismiss an action under Subsection (a) unless the court finds that the principal lacks capacity to revoke the agent's authority or the durable power of attorney.

SECTION 9. Section 752.051, Estates Code, is amended to read as follows:

Sec. 752.051. FORM. The following form is known as a "statutory durable power of attorney":

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P, TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT

AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO. IF YOU WANT YOUR AGENT TO HAVE THE AUTHORITY TO SIGN HOME EQUITY LOAN DOCUMENTS ON YOUR BEHALF, THIS POWER OF ATTORNEY MUST BE SIGNED BY YOU AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW, OR A TITLE COMPANY.

You should select someone you trust to serve as your agent (attorney in fact). Unless you specify otherwise, generally the agent's (attorney in fact's) authority will continue until:

- (1) you die or revoke the power of attorney;
- (2) your agent (attorney in fact) resigns or is unable to act for you; or
- (3) a guardian is appointed for your estate.

I, \_\_\_\_\_ (insert your name and address), appoint \_\_\_\_\_ (insert the name and address of the person appointed) as my agent (attorney in fact) to act for me in any lawful way with respect to all of the following powers that I have initialed below. (YOU MAY APPOINT CO-AGENTS. UNLESS YOU PROVIDE OTHERWISE, CO-AGENTS MAY ACT INDEPENDENTLY.)

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS LISTED IN (A) THROUGH (M).

TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

- \_\_\_\_ (A) Real property transactions;
- \_\_\_\_ (B) Tangible personal property transactions;
- \_\_\_\_ (C) Stock and bond transactions;
- \_\_\_\_ (D) Commodity and option transactions;
- \_\_\_\_ (E) Banking and other financial institution transactions;
- \_\_\_\_ (F) Business operating transactions;
- \_\_\_\_ (G) Insurance and annuity

AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO. IF YOU WANT YOUR AGENT TO HAVE THE AUTHORITY TO SIGN HOME EQUITY LOAN DOCUMENTS ON YOUR BEHALF, THIS POWER OF ATTORNEY MUST BE SIGNED BY YOU AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW, OR A TITLE COMPANY.

You should select someone you trust to serve as your agent [~~(attorney in fact)~~]. Unless you specify otherwise, generally the agent's [~~(attorney in fact's)~~] authority will continue until:

- (1) you die or revoke the power of attorney;
- (2) your agent [~~(attorney in fact)~~] resigns or is unable to act for you; or
- (3) a guardian is appointed for your estate.

I, \_\_\_\_\_ (insert your name and address), appoint \_\_\_\_\_ (insert the name and address of the person appointed) as my agent [~~(attorney in fact)~~] to act for me in any lawful way with respect to all of the following powers that I have initialed below. (YOU MAY APPOINT CO-AGENTS. UNLESS YOU PROVIDE OTHERWISE, CO-AGENTS MAY ACT INDEPENDENTLY.)

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS LISTED IN (A) THROUGH (M).

TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

- \_\_\_\_ (A) Real property transactions;
- \_\_\_\_ (B) Tangible personal property transactions;
- \_\_\_\_ (C) Stock and bond transactions;
- \_\_\_\_ (D) Commodity and option transactions;
- \_\_\_\_ (E) Banking and other financial institution transactions;
- \_\_\_\_ (F) Business operating transactions;
- \_\_\_\_ (G) Insurance and annuity

transactions;  
\_\_\_\_ (H) Estate, trust, and other beneficiary transactions;  
\_\_\_\_ (I) Claims and litigation;  
\_\_\_\_ (J) Personal and family maintenance;  
\_\_\_\_ (K) Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;  
\_\_\_\_ (L) Retirement plan transactions;  
\_\_\_\_ (M) Tax matters;  
\_\_\_\_ (N) ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:  
Special instructions applicable to agent compensation (initial in front of one of the following sentences to have it apply; if no selection is made, each agent will be entitled to compensation that is reasonable under the circumstances):

My agent is entitled to reimbursement of reasonable expenses incurred on my behalf and to compensation that is reasonable under the circumstances.

My agent is entitled to reimbursement of reasonable expenses incurred on my behalf but shall receive no compensation for serving as my agent.

Special instructions applicable to co-agents (if you have appointed co-agents to act, initial in front of one of the following sentences to have it apply; if no selection is made, each agent will be entitled to act independently):

Each of my co-agents may act independently for me.

My co-agents may act for me only if the co-agents act jointly.

My co-agents may act for me only if a majority of the co-agents act jointly.

Special instructions applicable to gifts (initial in front of the following sentence to have it apply):

\_\_\_\_ I grant my agent (attorney in fact) the power to apply my property to make gifts outright to or for the benefit of a person, including by the exercise of a presently exercisable general power of appointment held by me, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

transactions;  
\_\_\_\_ (H) Estate, trust, and other beneficiary transactions;  
\_\_\_\_ (I) Claims and litigation;  
\_\_\_\_ (J) Personal and family maintenance;  
\_\_\_\_ (K) Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;  
\_\_\_\_ (L) Retirement plan transactions;  
\_\_\_\_ (M) Tax matters;  
\_\_\_\_ (N) ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:  
Special instructions applicable to agent compensation (initial in front of one of the following sentences to have it apply; if no selection is made, each agent will be entitled to compensation that is reasonable under the circumstances):

My agent is entitled to reimbursement of reasonable expenses incurred on my behalf and to compensation that is reasonable under the circumstances.

My agent is entitled to reimbursement of reasonable expenses incurred on my behalf but shall receive no compensation for serving as my agent.

Special instructions applicable to co-agents (if you have appointed co-agents to act, initial in front of one of the following sentences to have it apply; if no selection is made, each agent will be entitled to act independently):

Each of my co-agents may act independently for me.

My co-agents may act for me only if the co-agents act jointly.

My co-agents may act for me only if a majority of the co-agents act jointly.

Special instructions applicable to gifts (initial in front of the following sentence to have it apply):

\_\_\_\_ I grant my agent [(attorney in fact)] the power to apply my property to make gifts outright to or for the benefit of a person, including by the exercise of a presently exercisable general power of appointment held by me, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

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ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

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UNLESS YOU DIRECT OTHERWISE BELOW [~~ABOVE~~], THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT TERMINATES [~~IS REVOKED~~]. CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

- (A) This power of attorney is not affected by my subsequent disability or incapacity.
  - (B) This power of attorney becomes effective upon my disability or incapacity.
- YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third

UNLESS YOU DIRECT OTHERWISE BELOW [~~ABOVE~~], THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT TERMINATES [~~IS REVOKED~~]. CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

- (A) This power of attorney is not affected by my subsequent disability or incapacity.
  - (B) This power of attorney becomes effective upon my disability or incapacity.
- YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third

party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Termination [~~Revocation~~] of this [~~the~~] durable power of attorney is not effective as to a third party until the third party has actual knowledge [~~receives actual notice~~] of the termination [~~revocation~~]. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

If any agent named by me dies, becomes incapacitated [~~legally disabled~~], resigns, or refuses to act, or if my marriage to an agent named by me is dissolved by a court decree of divorce or annulment or is declared void by a court (unless I provided in this document that the dissolution or declaration does not terminate the agent's authority to act under this power of attorney), I name the following (each to act alone and successively, in the order named) as successor(s) to that agent: \_\_\_\_\_.

Signed this \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_  
(your signature)  
State of \_\_\_\_\_  
County of \_\_\_\_\_

This document was acknowledged before me on \_\_\_\_\_(date) by

\_\_\_\_\_  
(name of principal)

\_\_\_\_\_  
(signature of notarial officer)  
(Seal, if any, of notary)

\_\_\_\_\_  
(printed name)  
My commission expires: \_\_\_\_\_

**IMPORTANT INFORMATION FOR AGENT (ATTORNEY IN FACT)**

**Agent's Duties**

When you accept the authority granted under this power of attorney, you establish a "fiduciary" relationship with the principal. This is a special legal relationship that imposes on you legal duties that continue until you resign or the power of attorney is

party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Termination [~~Revocation~~] of this [~~the~~] durable power of attorney is not effective as to a third party until the third party has actual knowledge [~~receives actual notice~~] of the termination [~~revocation~~]. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney. The meaning and effect of this durable power of attorney is determined by Texas law.

If any agent named by me dies, becomes incapacitated [~~legally disabled~~], resigns, or refuses to act, or if my marriage to an agent named by me is dissolved by a court decree of divorce or annulment or is declared void by a court (unless I provided in this document that the dissolution or declaration does not terminate the agent's authority to act under this power of attorney), I name the following (each to act alone and successively, in the order named) as successor(s) to that agent: \_\_\_\_\_.

Signed this \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_  
(your signature)  
State of \_\_\_\_\_  
County of \_\_\_\_\_

This document was acknowledged before me on \_\_\_\_\_(date) by

\_\_\_\_\_  
(name of principal)

\_\_\_\_\_  
(signature of notarial officer)  
(Seal, if any, of notary)

\_\_\_\_\_  
(printed name)  
My commission expires: \_\_\_\_\_

**IMPORTANT INFORMATION FOR AGENT [~~(ATTORNEY IN FACT)~~]**

**Agent's Duties**

When you accept the authority granted under this power of attorney, you establish a "fiduciary" relationship with the principal. This is a special legal relationship that imposes on you legal duties that continue until you resign or the power of attorney is

terminated or revoked by the principal or by operation of law. A fiduciary duty generally includes the duty to:

- (1) act in good faith;
- (2) do nothing beyond the authority granted in this power of attorney;
- (3) act loyally for the principal's benefit;
- (4) avoid conflicts that would impair your ability to act in the principal's best interest; and
- (5) disclose your identity as an agent or attorney in fact when you act for the principal by writing or printing the name of the principal and signing your own name as "agent" or "attorney in fact" in the following manner:

(Principal's Name) by (Your Signature) as Agent (or as Attorney in Fact)

In addition, the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code) requires you to:

- (1) maintain records of each action taken or decision made on behalf of the principal;
- (2) maintain all records until delivered to the principal, released by the principal, or discharged by a court; and
- (3) if requested by the principal, provide an accounting to the principal that, unless otherwise directed by the principal or otherwise provided in the Special Instructions, must include:
  - (A) the property belonging to the principal that has come to your knowledge or into your possession;
  - (B) each action taken or decision made by you as agent or attorney in fact;
  - (C) a complete account of receipts, disbursements, and other actions of you as agent or attorney in fact that includes the source and nature of each receipt, disbursement, or action, with receipts of principal and income shown separately;
  - (D) a listing of all property over which you have exercised control that includes an adequate description of each asset and the asset's current value, if known to you;
  - (E) the cash balance on hand and the name and location of the depository at which the cash balance is kept;
  - (F) each known liability;
  - (G) any other information and facts known to you as necessary for a full and definite understanding of the exact condition of the property belonging to the principal; and
  - (H) all documentation regarding the

terminated or revoked by the principal or by operation of law. A fiduciary duty generally includes the duty to:

- (1) act in good faith;
- (2) do nothing beyond the authority granted in this power of attorney;
- (3) act loyally for the principal's benefit;
- (4) avoid conflicts that would impair your ability to act in the principal's best interest; and
- (5) disclose your identity as an agent ~~or attorney in fact~~ when you act for the principal by writing or printing the name of the principal and signing your own name as "agent" ~~or "attorney in fact"~~ in the following manner:

(Principal's Name) by (Your Signature) as Agent ~~(or as Attorney in Fact)~~

In addition, the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code) requires you to:

- (1) maintain records of each action taken or decision made on behalf of the principal;
- (2) maintain all records until delivered to the principal, released by the principal, or discharged by a court; and
- (3) if requested by the principal, provide an accounting to the principal that, unless otherwise directed by the principal or otherwise provided in the Special Instructions, must include:
  - (A) the property belonging to the principal that has come to your knowledge or into your possession;
  - (B) each action taken or decision made by you as agent ~~or attorney in fact~~;
  - (C) a complete account of receipts, disbursements, and other actions of you as agent ~~or attorney in fact~~ that includes the source and nature of each receipt, disbursement, or action, with receipts of principal and income shown separately;
  - (D) a listing of all property over which you have exercised control that includes an adequate description of each asset and the asset's current value, if known to you;
  - (E) the cash balance on hand and the name and location of the depository at which the cash balance is kept;
  - (F) each known liability;
  - (G) any other information and facts known to you as necessary for a full and definite understanding of the exact condition of the property belonging to the principal; and
  - (H) all documentation regarding the



principal's property.

#### Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. An event that terminates this power of attorney or your authority to act under this power of attorney includes:

- (1) the principal's death;
- (2) the principal's revocation of this power of attorney or your authority;
- (3) the occurrence of a termination event stated in this power of attorney;
- (4) if you are married to the principal, the dissolution of your marriage by a court decree of divorce or annulment or declaration that your marriage is void, unless otherwise provided in this power of attorney;
- (5) the appointment and qualification of a permanent guardian of the principal's estate; or
- (6) if ordered by a court, the suspension of this power of attorney on the appointment and qualification of a temporary guardian until the date the term of the temporary guardian expires.

#### Liability of Agent

The authority granted to you under this power of attorney is specified in the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code). If you violate the Durable Power of Attorney Act or act beyond the authority granted, you may be liable for any damages caused by the violation or subject to prosecution for misapplication of property by a fiduciary under Chapter 32 of the Texas Penal Code.

THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

SECTION 10. Subchapter B, Chapter 752, Estates Code, is amended.

SECTION 11. Section 752.102, Estates Code, is amended to read as follows:

Sec. 752.102. REAL PROPERTY TRANSACTIONS. (a) The language conferring authority with respect to real property transactions in a statutory durable power of attorney empowers the attorney in

principal's property.

#### Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. An event that terminates this power of attorney or your authority to act under this power of attorney includes:

- (1) the principal's death;
- (2) the principal's revocation of this power of attorney or your authority;
- (3) the occurrence of a termination event stated in this power of attorney;
- (4) if you are married to the principal, the dissolution of your marriage by a court decree of divorce or annulment or declaration that your marriage is void, unless otherwise provided in this power of attorney;
- (5) the appointment and qualification of a permanent guardian of the principal's estate; or
- (6) if ordered by a court, the suspension of this power of attorney on the appointment and qualification of a temporary guardian until the date the term of the temporary guardian expires.

#### Liability of Agent

The authority granted to you under this power of attorney is specified in the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code). If you violate the Durable Power of Attorney Act or act beyond the authority granted, you may be liable for any damages caused by the violation or subject to prosecution for misapplication of property by a fiduciary under Chapter 32 of the Texas Penal Code.

THE ~~ATTORNEY IN FACT OR~~ AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

SECTION 10. Same as introduced version.

SECTION 11. Section 752.102, Estates Code, is amended to read as follows:

Sec. 752.102. REAL PROPERTY TRANSACTIONS. (a) The language conferring authority with respect to real property transactions in a statutory durable power of attorney empowers the ~~attorney in~~

fact or agent, without further reference to a specific description of the real property, to:

(1) accept as a gift or as security for a loan or reject, demand, buy, lease, receive, or otherwise acquire an interest in real property or a right incident to real property;

(2) sell, exchange, convey with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition or consent to partitioning, subdivide, apply for zoning, rezoning, or other governmental permits, plat or consent to platting, develop, grant options concerning, lease or sublet, or otherwise dispose of an estate or interest in real property or a right incident to real property;

(3) release, assign, satisfy, and enforce by litigation, action, or otherwise a mortgage, deed of trust, encumbrance, lien, or other claim to real property that exists or is claimed to exist;

(4) perform any act of management or of conservation with respect to an interest in real property, or a right incident to real property, owned or claimed to be owned by the principal, including the authority to:

(A) insure against a casualty, liability, or loss;

(B) obtain or regain possession or protect the interest or right by litigation, action, or otherwise;

(C) pay, compromise, or contest taxes or assessments or apply for and receive refunds in connection with the taxes or assessments;

(D) purchase supplies, hire assistance or labor, or make repairs or alterations to the real property; and

(E) manage and supervise an interest in real property, including the mineral estate~~[-by, for example:~~

~~[(i) entering into a lease for oil, gas, and mineral purposes;~~

~~[(ii) making contracts for development of the mineral estate; or~~

~~[(iii) making pooling and unitization agreements];~~

(5) use, develop, alter, replace, remove, erect, or install structures or other improvements on real property in which the principal has or claims to have an estate, interest, or right;

(6) participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property, receive and hold shares of stock or

~~fact or~~ agent, without further reference to a specific description of the real property, to:

(1) accept as a gift or as security for a loan or reject, demand, buy, lease, receive, or otherwise acquire an interest in real property or a right incident to real property;

(2) sell, exchange, convey with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition or consent to partitioning, subdivide, apply for zoning, rezoning, or other governmental permits, plat or consent to platting, develop, grant options concerning, lease or sublet, or otherwise dispose of an estate or interest in real property or a right incident to real property;

(3) release, assign, satisfy, and enforce by litigation, action, or otherwise a mortgage, deed of trust, encumbrance, lien, or other claim to real property that exists or is claimed to exist;

(4) perform any act of management or of conservation with respect to an interest in real property, or a right incident to real property, owned or claimed to be owned by the principal, including the authority to:

(A) insure against a casualty, liability, or loss;

(B) obtain or regain possession or protect the interest or right by litigation, action, or otherwise;

(C) pay, compromise, or contest taxes or assessments or apply for and receive refunds in connection with the taxes or assessments;

(D) purchase supplies, hire assistance or labor, or make repairs or alterations to the real property; and

(E) manage and supervise an interest in real property, including the mineral estate~~[-by, for example:~~

~~[(i) entering into a lease for oil, gas, and mineral purposes;~~

~~[(ii) making contracts for development of the mineral estate; or~~

~~[(iii) making pooling and unitization agreements];~~

(5) use, develop, alter, replace, remove, erect, or install structures or other improvements on real property in which the principal has or claims to have an estate, interest, or right;

(6) participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property, receive and hold shares of stock or

obligations received in a plan or reorganization, and act with respect to the shares or obligations, including:

(A) selling or otherwise disposing of the shares or obligations;

(B) exercising or selling an option, conversion, or similar right with respect to the shares or obligations; and

(C) voting the shares or obligations in person or by proxy;

(7) change the form of title of an interest in or right incident to real property; ~~and~~

(8) dedicate easements or other real property in which the principal has or claims to have an interest to public use, with or without consideration;

(9) enter into mineral transactions, including:

(A) negotiating and making oil, gas, and other mineral leases covering any land, mineral, or royalty interest in which the principal has or claims to have an interest;

(B) pooling and unitizing all or part of the principal's land, mineral leasehold, mineral, royalty, or other interest with land, mineral leasehold, mineral, royalty, or other interest of one or more persons for the purpose of developing and producing oil, gas, or other minerals, and making leases or assignments granting the right to pool and unitize;

(C) entering into contracts and agreements concerning the installation and operation of plants or other facilities for the cycling, repressuring, processing, or other treating or handling of oil, gas, or other minerals;

(D) conducting or contracting for the conducting of seismic evaluation operations;

(E) drilling or contracting for the drilling of wells for oil, gas, or other minerals;

(F) contracting for and making "dry hole" and "bottom hole" contributions of cash, leasehold interests, or other interests toward the drilling of wells;

(G) using or contracting for the use of any method of secondary or tertiary recovery of any mineral, including the injection of water, gas, air, or other substances;

(H) purchasing oil, gas, or other mineral leases, leasehold interests, or other interests for any type of consideration, including farmout agreements requiring the drilling or reworking of wells or participation in the drilling or reworking of wells;

(I) entering into farmout agreements committing the principal to assign oil, gas,

obligations received in a plan or reorganization, and act with respect to the shares or obligations, including:

(A) selling or otherwise disposing of the shares or obligations;

(B) exercising or selling an option, conversion, or similar right with respect to the shares or obligations; and

(C) voting the shares or obligations in person or by proxy;

(7) change the form of title of an interest in or right incident to real property; ~~and~~

(8) dedicate easements or other real property in which the principal has or claims to have an interest to public use, with or without consideration;

(9) enter into mineral transactions, including:

(A) negotiating and making oil, gas, and other mineral leases covering any land, mineral, or royalty interest in which the principal has or claims to have an interest;

(B) pooling and unitizing all or part of the principal's land, mineral leasehold, mineral, royalty, or other interest with land, mineral leasehold, mineral, royalty, or other interest of one or more persons for the purpose of developing and producing oil, gas, or other minerals, and making leases or assignments granting the right to pool and unitize;

(C) entering into contracts and agreements concerning the installation and operation of plants or other facilities for the cycling, repressuring, processing, or other treating or handling of oil, gas, or other minerals;

(D) conducting or contracting for the conducting of seismic evaluation operations;

(E) drilling or contracting for the drilling of wells for oil, gas, or other minerals;

(F) contracting for and making "dry hole" and "bottom hole" contributions of cash, leasehold interests, or other interests toward the drilling of wells;

(G) using or contracting for the use of any method of secondary or tertiary recovery of any mineral, including the injection of water, gas, air, or other substances;

(H) purchasing oil, gas, or other mineral leases, leasehold interests, or other interests for any type of consideration, including farmout agreements requiring the drilling or reworking of wells or participation in the drilling or reworking of wells;

(I) entering into farmout agreements committing the principal to assign oil, gas,

or other mineral leases or interests in consideration for the drilling of wells or other oil, gas, or mineral operations;

(J) negotiating the transfer of and transferring oil, gas, or other mineral leases or interests for any consideration, such as retained overriding royalty interests of any nature, drilling or reworking commitments, or production interests;

(K) executing and entering into contracts, conveyances, and other agreements or transfers considered necessary or desirable to carry out the powers granted in this section, including entering into and executing division orders, oil, gas, or other mineral sales contracts, exploration agreements, processing agreements, and other contracts relating to the processing, handling, treating, transporting, and marketing of oil, gas, or other mineral production from or accruing to the principal and receiving and receipting for the proceeds of those contracts, conveyances, and other agreements and transfers on behalf of the principal; and

(L) taking an action described by Paragraph (K) regardless of whether the action is, at the time the action is taken or subsequently, recognized or considered as a common or proper practice by those engaged in the business of prospecting for, developing, producing, processing, transporting, or marketing minerals; and

(10) designate the property that constitutes the principal's homestead.

(b) The power to mortgage and encumber real property provided by this section includes the power to execute documents necessary to create a lien against the principal's homestead as provided by Section 50, Article XVI, Texas Constitution, and to consent to the creation of a lien against property owned by the principal's spouse in which the principal has a homestead interest.

SECTION 12. Section 752.108(b), Estates Code, is amended to read as follows:

(b) Unless the principal has granted the authority to create or change a beneficiary designation expressly as required by Section 751.031(b)(4), an [An] attorney in fact or agent may be named a beneficiary of an insurance contract or an extension, renewal, or substitute for the contract only to the

or other mineral leases or interests in consideration for the drilling of wells or other oil, gas, or mineral operations;

(J) negotiating the transfer of and transferring oil, gas, or other mineral leases or interests for any consideration, such as retained overriding royalty interests of any nature, drilling or reworking commitments, or production interests;

(K) executing and entering into contracts, conveyances, and other agreements or transfers considered necessary or desirable to carry out the powers granted in this section, including entering into and executing division orders, oil, gas, or other mineral sales contracts, exploration agreements, processing agreements, and other contracts relating to the processing, handling, treating, transporting, and marketing of oil, gas, or other mineral production from or accruing to the principal and receiving and receipting for the proceeds of those contracts, conveyances, and other agreements and transfers on behalf of the principal; and

(L) taking an action described by Paragraph (K) regardless of whether the action is, at the time the action is taken or subsequently, recognized or considered as a common or proper practice by those engaged in the business of prospecting for, developing, producing, processing, transporting, or marketing minerals; and

(10) designate the property that constitutes the principal's homestead.

(b) The power to mortgage and encumber real property provided by this section includes the power to execute documents necessary to create a lien against the principal's homestead as provided by Section 50, Article XVI, Texas Constitution, and to consent to the creation of a lien against property owned by the principal's spouse in which the principal has a homestead interest.

SECTION 12. Section 752.108(b), Estates Code, is amended to read as follows:

(b) Unless the principal has granted the authority to create or change a beneficiary designation expressly as required by Section 751.031(b)(4), an [An attorney in fact or] agent may be named a beneficiary of an insurance contract or an extension, renewal, or substitute for the contract only to the

extent the attorney in fact or agent was named as a beneficiary [~~under a contract procured~~] by the principal [~~before executing the power of attorney~~].

SECTION 13. Sections 752.109 and 752.111, Estates Code, are amended to read as follows:

Sec. 752.109. ESTATE, TRUST, AND OTHER BENEFICIARY TRANSACTIONS.

The language conferring authority with respect to estate, trust, and other beneficiary transactions in a statutory durable power of attorney empowers the attorney in fact or agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, life estate, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled, as a beneficiary, to a share or payment, including to:

- (1) accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund;
- (2) demand or obtain by litigation, action, or otherwise money or any other thing of value to which the principal is, may become, or claims to be entitled because of the fund;
- (3) initiate, participate in, or oppose a legal or judicial proceeding to:
  - (A) ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal; or
  - (B) remove, substitute, or surcharge a fiduciary;
- (4) conserve, invest, disburse, or use anything received for an authorized purpose; and
- (5) transfer all or part of the principal's interest in real property, stocks, bonds, accounts with financial institutions, insurance, and other property to the trustee of a revocable trust created by the principal as settlor.

Sec. 752.111. PERSONAL AND FAMILY MAINTENANCE. The language conferring authority with respect to personal and family maintenance in a statutory durable power of attorney empowers the attorney in fact or agent to:

- (1) perform the acts necessary to maintain the customary standard of living of the

extent the ~~attorney in fact or~~ agent was named as a beneficiary [~~under a contract procured~~] by the principal [~~before executing the power of attorney~~].

SECTION 13. Sections 752.109 and 752.111, Estates Code, are amended to read as follows:

Sec. 752.109. ESTATE, TRUST, AND OTHER BENEFICIARY TRANSACTIONS.

The language conferring authority with respect to estate, trust, and other beneficiary transactions in a statutory durable power of attorney empowers the ~~attorney in fact or~~ agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, life estate, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled, as a beneficiary, to a share or payment, including to:

- (1) accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund;
- (2) demand or obtain by litigation, action, or otherwise money or any other thing of value to which the principal is, may become, or claims to be entitled because of the fund;
- (3) initiate, participate in, or oppose a legal or judicial proceeding to:
  - (A) ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal; or
  - (B) remove, substitute, or surcharge a fiduciary;
- (4) conserve, invest, disburse, or use anything received for an authorized purpose; and
- (5) transfer all or part of the principal's interest in real property, stocks, bonds, accounts with financial institutions, insurance, and other property to the trustee of a revocable trust created by the principal as settlor.

Sec. 752.111. PERSONAL AND FAMILY MAINTENANCE. The language conferring authority with respect to personal and family maintenance in a statutory durable power of attorney empowers the ~~attorney in fact or~~ agent to:

- (1) perform the acts necessary to maintain the customary standard of living of the

principal, the principal's spouse and children, and other individuals customarily or legally entitled to be supported by the principal, including:

(A) providing living quarters by purchase, lease, or other contract; or

(B) paying the operating costs, including interest, amortization payments, repairs, and taxes on premises owned by the principal and occupied by those individuals;

(2) provide for the individuals described by Subdivision (1):

(A) normal domestic help;

(B) usual vacations and travel expenses; and

(C) money for shelter, clothing, food, appropriate education, and other living costs;

(3) pay necessary medical, dental, and surgical care, hospitalization, and custodial care for the individuals described by Subdivision (1);

(4) continue any provision made by the principal for the individuals described by Subdivision (1) for automobiles or other means of transportation, including registering, licensing, insuring, and replacing the automobiles or other means of transportation;

(5) maintain or open charge accounts for the convenience of the individuals described by Subdivision (1) and open new accounts the attorney in fact or agent considers desirable to accomplish a lawful purpose; ~~[and]~~

(6) continue:

(A) payments incidental to the membership or affiliation of the principal in a church, club, society, order, or other organization; or

(B) contributions to those organizations;

(7) perform all acts necessary in relation to the principal's mail, including:

(A) receiving, signing for, opening, reading, and responding to any mail addressed to the principal, whether through the United States Postal Service or a private mail service;

(B) forwarding the principal's mail to any address; and

(C) representing the principal before the United States Postal Service in all matters relating to mail service; and

(8) subject to the needs of the individuals described by Subdivision (1), provide for the reasonable care of the principal's pets.

principal, the principal's spouse and children, and other individuals customarily or legally entitled to be supported by the principal, including:

(A) providing living quarters by purchase, lease, or other contract; or

(B) paying the operating costs, including interest, amortization payments, repairs, and taxes on premises owned by the principal and occupied by those individuals;

(2) provide for the individuals described by Subdivision (1):

(A) normal domestic help;

(B) usual vacations and travel expenses; and

(C) money for shelter, clothing, food, appropriate education, and other living costs;

(3) pay necessary medical, dental, and surgical care, hospitalization, and custodial care for the individuals described by Subdivision (1);

(4) continue any provision made by the principal for the individuals described by Subdivision (1) for automobiles or other means of transportation, including registering, licensing, insuring, and replacing the automobiles or other means of transportation;

(5) maintain or open charge accounts for the convenience of the individuals described by Subdivision (1) and open new accounts the ~~[attorney in fact or]~~ agent considers desirable to accomplish a lawful purpose; ~~[and]~~

(6) continue:

(A) payments incidental to the membership or affiliation of the principal in a church, club, society, order, or other organization; or

(B) contributions to those organizations;

(7) perform all acts necessary in relation to the principal's mail, including:

(A) receiving, signing for, opening, reading, and responding to any mail addressed to the principal, whether through the United States Postal Service or a private mail service;

(B) forwarding the principal's mail to any address; and

(C) representing the principal before the United States Postal Service in all matters relating to mail service; and

(8) subject to the needs of the individuals described by Subdivision (1), provide for the reasonable care of the principal's pets.

SECTION 14. Sections 752.113(b) and (c), Estates Code, are amended to read as follows:

(b) The language conferring authority with respect to retirement plan transactions in a statutory durable power of attorney empowers the attorney in fact or agent to perform any lawful act the principal may perform with respect to a transaction relating to a retirement plan, including to:

- (1) apply for service or disability retirement benefits;
- (2) select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals;
- (3) designate or change the designation of a beneficiary or benefits payable by a retirement plan, except as provided by Subsection (c);
- (4) make voluntary contributions to retirement plans if authorized by the plan;
- (5) exercise the investment powers available under any self-directed retirement plan;
- (6) make rollovers of plan benefits into other retirement plans;
- (7) borrow from, sell assets to, and purchase assets from retirement plans if authorized by the plan;
- (8) waive the principal's right to be a beneficiary of a joint or survivor annuity if the principal is not the participant in the retirement plan [~~a spouse who is not employed~~];
- (9) receive, endorse, and cash payments from a retirement plan;
- (10) waive the principal's right to receive all or a portion of benefits payable by a retirement plan; and
- (11) request and receive information relating to the principal from retirement plan records.

(c) Unless the principal has granted the authority to create or change a beneficiary designation expressly as required by Section 751.031(b)(4), an [An] attorney in fact or agent may be named a beneficiary under a retirement plan only to the extent the attorney in fact or agent was a named a beneficiary by the principal under the retirement plan, or in the case of a rollover or trustee-to-trustee transfer, the predecessor retirement plan [~~before the durable power of attorney was executed~~].

SECTION 14. Sections 752.113(b) and (c), Estates Code, are amended to read as follows:

(b) The language conferring authority with respect to retirement plan transactions in a statutory durable power of attorney empowers the ~~[attorney in fact or]~~ agent to perform any lawful act the principal may perform with respect to a transaction relating to a retirement plan, including to:

- (1) apply for service or disability retirement benefits;
- (2) select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals;
- (3) designate or change the designation of a beneficiary or benefits payable by a retirement plan, except as provided by Subsection (c);
- (4) make voluntary contributions to retirement plans if authorized by the plan;
- (5) exercise the investment powers available under any self-directed retirement plan;
- (6) make rollovers of plan benefits into other retirement plans;
- (7) borrow from, sell assets to, and purchase assets from retirement plans if authorized by the plan;
- (8) waive the principal's right to be a beneficiary of a joint or survivor annuity if the principal is not the participant in the retirement plan [~~a spouse who is not employed~~];
- (9) receive, endorse, and cash payments from a retirement plan;
- (10) waive the principal's right to receive all or a portion of benefits payable by a retirement plan; and
- (11) request and receive information relating to the principal from retirement plan records.

(c) Unless the principal has granted the authority to create or change a beneficiary designation expressly as required by Section 751.031(b)(4), an [An attorney in fact or] agent may be named a beneficiary under a retirement plan only to the extent the ~~[attorney in fact or]~~ agent was a named a beneficiary by the principal under the retirement plan, or in the case of a rollover or trustee-to-trustee transfer, the predecessor retirement plan [~~before the durable power of attorney was executed~~].

SECTION 15. The following sections of the Estates Code are repealed.

SECTION 15. Same as introduced version.

SECTION 16. (a) Except as otherwise provided by this Act, this Act applies to:

SECTION 16. Same as introduced version.

(1) a durable power of attorney, including a statutory durable power of attorney, created before, on, or after the effective date of this Act; and

(2) a judicial proceeding concerning a durable power of attorney pending on, or commenced on or after, the effective date of this Act.

(b) The following provisions apply only to a durable power of attorney, including a statutory durable power of attorney, executed on or after the effective date of this Act:

(1) Section 751.024, Estates Code, as added by this Act;

(2) Subchapter A-2, Chapter 751, Estates Code, as added by this Act;

(3) Subchapters B, C, and D, Chapter 751, Estates Code, as amended by this Act; and

(4) Chapter 752, Estates Code, as amended by this Act.

(c) A durable power of attorney, including a statutory durable power of attorney, executed before the effective date of this Act is governed by the provisions specified in Subsections (b)(3) and (4) of this section as those provisions existed on the date the durable power of attorney was executed, and the former law is continued in effect for that purpose.

(d) If the court finds that application of a provision of this Act would substantially interfere with the effective conduct of a judicial proceeding concerning a durable power of attorney commenced before the effective date of this Act or would prejudice the rights of a party to the proceeding, the provision of this Act does not apply and the former law continues in effect for that purpose and applies in those circumstances.

(e) An act performed by a principal or agent with respect to a durable power of attorney before the effective date of this Act is not affected by this Act.

SECTION 17. This Act takes effect September 1, 2017.

SECTION 17. Same as introduced version.